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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,367	04/12/2004	Fred Sterzer	MMTC 04-1	3072

7590 12/13/2007
FRED STERZER
MMTC, INC.
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PRINCETON, NJ 08540

EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,367

Applicant(s)

STERZER ET AL.

Examiner

Roy D. Gibson

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 8-10 is/are rejected.
- 7) ☒ Claim(s) 2,4-7 and 11-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Formal Matters

After further review by the Office of the Appeal Brief filed on 7/2/2007, the finality of the Office action mailed 6/26/2006 and citing rejections with the Truckai et al. and Kasevich et al. references is withdrawn and prosecution is reopened. However, new grounds of rejection are presented below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosen et al. (4,998,932).

As to claims 1, 3 and 8, Rosen et al. disclose:

In a balloon catheter suitable for use in treating diseased tissue of a patient, wherein said balloon catheter comprises a catheter body, an inflatable balloon surrounding said catheter body, and an antenna, wherein in use (1) said catheter with said balloon in a deflated state may first be positioned so that said antenna is aligned with said patient's diseased tissue and (2) said balloon may then be inflated so that an exterior surface of said balloon presses said diseased tissue while said antenna transmits radiant energy to said diseased tissue thereby to effect the heating of said diseased tissue; the improvement comprising:

said directional microwave antenna (Figure 4b, # 87) is longitudinally physically situated in cooperative relationship with said exterior surface of said balloon (68) , thereby in use causing said inflated balloon pressing said diseased tissue to result in said antenna being in direct contact with irradiated tissue of said patient (col. 4, line 64- col. 6, line 28). Note in col. 6, line 25, antenna (87) may be either on an interior an exterior of the balloon membrane (68), therefore, in direct contact with irradiated tissue of said patient.

As to claim 9, Rosen et al. further disclose the directional microwave antenna on the exterior of the balloon membrane is capable in use of causing said inflated balloon to press against said lining tissue of said orifice that is adjacent to said patient's tissue, to result in said antenna being in direct contact with said tissue of said patient and (2) transmits radiant energy of a given frequency band to said diseased tissue in response to power within said given frequency band being supplied to said antenna; and

a power source and means including a feedline for supplying a given amount of power within said given frequency band to said external directional antenna, thereby to irradiate said diseased tissue and thereby effect the heating to a given therapeutic temperature

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosen et al in view of Dann et al. (6,223,085). Rosen et al. fails to specifically disclose the frequency of the microwave energy applied is 915 MHz. However, Dann et al. discloses a similar device and method of heating tissue wherein the microwave generator produces high frequency waves, preferably at about 915 MHz (col. 4, lines 30-47). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to look to the device of Dann et al., to select the frequency of application by Rosen et al. in order to heat tissue as required by the procedure.

Allowable Subject Matter

Claims 2, 4-7 and 11-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

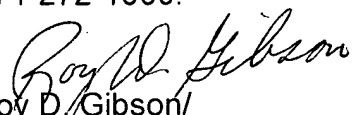
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


/Roy D. Gibson/
Primary Examiner
Art Unit 3739

December 10, 2007